

Special Education Due Process Hearing Decision
CSD 18 v. Parent
January 25, 1998

Case No. 97.184

**Representing the School: Eric Herlan, Esq., Drummond Woodsum
MacMahon**

Representing the Parent: Peter Rice, Esq., Maine Advocacy Services

Hearing Officer: Carol B. Lenna

THIS HEARING WAS HELD AND THE DECISION WRITTEN PURSUANT TO TITLE 20-A MRSA, §7207 et. seq., 20 USC, §1415 et. seq., AND IMPLEMENTING REGULATIONS.

The hearing was requested on October 24, 1997, by Community School District 18 the district in which the student (DOB:) and the parent reside in Wells, Maine. The parent and the school have been unable to agree on a program to address the student's educational and related needs. It was the school's stated purpose to have a hearing officer review the program proposed by the PET in October 1997 and determine if it is reasonably calculated to provide the student with a free appropriate public education, and if not, to order such a program. In addition, a number of other procedural and administrative issues were raised.

The hearing was scheduled for Tuesday, November 25, with a pre-hearing conference scheduled for Wednesday, November 19. Attorneys for both parent and school requested an extension of the originally scheduled dates and agreed to waive the 45-day requirement for completion of the hearing in order to accommodate the requests. A pre-hearing telephone conference was held on Friday, December 1. The hearing was held on December 9. A second hearing date was scheduled for December 17, but at the request of the parent the remaining witnesses' testimony was presented in writing on that date. There was no objection from the school. The hearing record was held open until December 31 for the submission of written summations by the parties.¹ Six hundred and fifty four pages were entered into the record for this hearing. Six witnesses gave testimony.

97.184
Page 2

¹ An ice storm causing widespread power outage delayed the writing of the decision for 12 days.

Just prior to the hearing the mother requested an application from the Department of Education to home school the student. Her attorney requested the hearing be dismissed on the basis that the student no longer was a student of CSD 18. Given the history of conflict between the parent and the school and the school's continuing legal obligation to have a program in place for the student should the student wish to access it, the hearing officer continued with the hearing. The mother did not appear at the hearing, however she was represented throughout the proceeding by her attorney.

I. Preliminary Statement

The student is a x year old student eligible for special education services under the category of behavior impairment. The student currently is not attending any special education program. Until May of 1997 the student was placed in an integrated program in which the student spent half of the day doing academic work in a therapeutic day treatment program at Sweetser School and the other half of the student's day in a work experience with Future Builders, Inc. The current IEP proposed by the school recommends a similar program in which the student would spend a half day in a day treatment program and a half day in a work experience program. After several PET meetings to finalize the program the parent and the school were unable to agree. This hearing is brought by the school in an effort to provide parameters to guide the parties in providing an appropriate program to the student.

It is the school's contention that they are presently unable to develop and deliver an appropriate program for the student because of the mother's uncooperative behavior; that in her efforts to advocate for her child, the parent has become an impediment to providing the student a free appropriate public education. They argue that the parent has interfered with the PET's ability to properly evaluate the student, and has blocked program efforts to meet the student's special education and related needs.

It is the parent's contention that the student is a child with a mental illness who requires specialized programming. She wishes an appropriate placement for the student in the least restrictive educational environment which balances the student's mental health needs with the student's educational needs. She states that she is not opposed to a comprehensive evaluation of the student and will agree to an evaluation being completed when it is appropriate to do so.

The student was not attending school at the beginning of the hearing process and the parties had been unable to reach any agreement regarding placement. The hearing officer reviewed recent records and ordered the "stay put" program for the student during the pendency of the proceeding. In a memo to the parties, dated December 2, 1997, the Hearing Officer ordered the school to provide a tutor for the student two hours a day for a total of 10 hours per week. The parent refused the tutoring and formally

withdrew the student from school on December 8, requesting an application from the Department of Education to home school. At the close of the hearing the student was not enrolled in the CSD 18 district.

II. Issues for Hearing

1. Whether the student's proposed 1997-98 IEP is reasonably calculated to provide the student with educational benefit in the least restrictive environment? Whether, as part of this program, the student continues to require a 1:1 educational technician throughout the student's school day, and if the continued provision of a beeper to the student's mother is necessary in order for the student to obtain educational benefit?
2. Whether the student should undergo a triennial evaluation at this time, and to what extent the PET has the authority to define and direct the components of that evaluation.
3. Whether the student's mother has a legal right to edit evaluations that are ordered as part of the special education process and to determine whether or what part of those evaluations will be released to school officials who have a legitimate educational interest in their content?
4. Whether the student's mother has a legal right to control the release of information about her child back and forth between her child's educational service providers who are regular school employees or serve as such by virtue of a contractual relationship with the school?
5. Whether the student's mother has a legal right to determine what information shall be provided by the school to those educational entities or providers where the school is applying for the student's attendance?
6. Whether the student's mother has a legal right to determine which particular individuals shall be hired to work with her child?
7. Whether the student's mother has a legal right to be paid mileage for her own attendance at PET meetings for the student?
8. Whether the school is required to transport the student to services and programs that are not part of the student's IEP, but are being provided by other agencies?
9. Whether the student's mother has a legal right to control who the school may invite to attend the student's PET meetings?

III. Findings of Fact

1. The student is a x year old student who is identified as eligible for special education services under the category of behavior impairment. The student was first identified for services when the student was in kindergarten. (Exhibits 15, 1050).

2. The only recent evaluation presented in the record was conducted in June 1995 during a diagnostic placement at the Spurwink School. This evaluation consisted of a Kauffman Test of Individual Achievement and a clinical observation by the consulting psychiatrist. The Kauffman found that the student scored above average in reading comprehension, and within the average range in reading decoding. Math computation and spelling skills were below average, while math reasoning skills were shown to be a relative strength. (Exhibit 601)

3. The clinical observation and review of the student's performance during the placement was done by the Spurwink consulting psychiatrist on June 14, 1995. The psychiatrist notes in his report that "[the student] carries a history of long-standing, recurrent depression and has had five previous psychiatric hospitalizations". He observed the student to be "presenting with a history of a severe and protracted mood disorder". He wrote that "the combined effect of [the student's] long-standing protracted depression along with (the student's) characterological impairment and the intensity of (the student's) symptoms, ...dictates that treatment occur in the context of a highly coordinated environment..." (Exhibit 613-615)

4. During the 1996-97 school year the student's IEP placed the student in a combination day treatment program and work experience program. The student attended the day treatment program at Sweetser 10 hours a week, and metalsmithing at Future Builders, Inc. for 12.5 hours per week . The student had the support of an Educational Technician III individually assigned to the student for the full day. The student participated in a 2 hour community field trip each week with the technician. In addition, the student's program included physical therapy, psychotherapy, and adaptive physical education. (Exhibit 398-411)

5. A "coping skills" list was developed by the day treatment program to assist the student to manage the student's inappropriate behaviors. One item on the list stated that "the student will begin to utilize problem solving skills with assistance from his one-one-aide, John". In April the student's mother requested that this item be removed from the list. That request was complied with. In early May, the student's educational technician (aide) requested he be removed from the student's case. The technician felt he could not work effectively with the student because he could no longer use the problem solving technique with the student to help the student cope with the student's behaviors. He stated that he did not wish to participate in a program in which the

97.184
Page 5

student was not encouraged to manage the student's mental illness. (Exhibit 179, 133-34, 141; Testimony Thibeault, Paquette)

6. In late May 1997 the student ceased attending the day treatment portion of the student's program. The student's attendance and compliance in the program began to

deteriorate after a disagreement between the student, the mother and Sweetser over replacement of the educational technician. The student and the mother were not satisfied with any other technician that Sweetser or the school attempted to assign to the student. The student began to regress in the program and finally stopped attending altogether. (Exhibits 103-118, 119-132; Testimony Paquette)

7. The student's program at Future Builders was continued through the summer. His attendance during the summer was sporadic, and the student's compliance with program by-laws was often a source of conflict between program staff and the student and the mother. The program director stated at the August 14 PET meeting that they observed the student's regression beginning the week of May 23. The student's "absences increased from May to the end of school". (Exhibit 38; Testimony Warg)

8. Progress reports from the 1996-97 school year show that, generally, the student performed well in the student's program. The student received passing grades in math and social studies at Sweetser and was named to the honor roll of the high school. Future Builders' progress notes show that, while there were fluctuations in program behavior, the student received a score of 3.25 or better (in a 4 point system) in all target areas except spelling. (Exhibits 74, 86-95, 138, 142, 154, 156-165, 167-169, 170; Testimony Warg, Paquette)

9. At five meetings held in May, August and October the PET discussed program options for the 1997-98 school year. There was never final agreement between the school and the parent regarding the 1997-98 IEP. (Exhibits 3, 8, 28, 38, 119, 144)

10. The proposed IEP dated August 14, 1997 consists of the same service array as the previous year's program. The goals and objectives included in the IEP are identical to goals and objectives included in the previous year's program. A Crisis Plan dated July 27, 1995 is attached to the IEP. This plan includes the use of a beeper (pager) to contact the student's mother. The school is paying for the student's mother to have the beeper. (Exhibit 15-24; Testimony Bergevine)

11. The school has been paying a mileage reimbursement to the student's mother for attending PET meetings. (Testimony Bergevine)

97.184
Page 6

IV. Conclusions

1. Is the student's proposed 1997-98 IEP reasonably calculated to provide him with educational benefit in the least restrictive environment? As part of the student's program does the student continue to require a 1:1 educational technician throughout the student's school day? Is the provision of a beeper to

the student's mother necessary in order for the student to obtain educational benefit?

It is the stated purpose of special education law that "all children with disabilities have available to them...a free appropriate public education...designed to meet their unique needs..." 20 USC §1400 (c) The legal standard which determines what constitutes a free appropriate public education was settled by the US Supreme Court when it ruled that the law is satisfied when a school provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The court made clear that the individual program should be reasonably calculated to enable the child to achieve passing marks and to advance from grade to grade; that special education law was not meant to guarantee a certain level of education services to a child, but merely to open the door of education to disabled children. Board of Education v. Rowley, 458 US 176 (1982).

Based on this standard the school is asking this hearing officer to determine if the program which was proposed to the parent in August 1997 and again in October will offer the student educational benefit. In order to answer that question, it is necessary to first review the 1996-97 program.

By all accounts the program which the student attended from September 1996 until May 1997 provided the student with educational benefit. The student attended on a regular basis during that period. The student's behavior was generally stable and showed some improvement over the year. The student completed a number of projects in both the work program and day treatment program. The student gained strength and increased mobility in the student's physical program. And, the student was actively involved in the community to a much greater extent than before. The student received passing grades in the student's academic subjects and was named to the honor roll at the high school. Because the parent has blocked the district's request to do updated individual standardized testing, there is no objective measure of this progress, but observations of staff and charting of targeted behaviors do support that progress was made.

97.184
Page 7

The IEP which is proposed by the school for the 1997-98 school year closely resembles this program - in fact, too closely. The cover sheet proposes a combined program of day treatment and work experience with physical therapy, psychological therapy and adaptive physical education as stated on the cover sheet for the previous IEP. The goals and objectives which are included in the proposed plan only address the day treatment portion of the student's day, but these goals and objectives are verbatim to the day treatment goals and objectives which were written in the 1996-97 IEP. The only

obvious difference in the two documents is the initiation date and the absence of work experience goals.

The school argues that the difficulties in getting the parent to allow service providers to share pertinent information, and the parent's refusal to allow evaluations to take place have hindered the district's ability to develop a completed program proposal. Certainly, the lack of updated evaluations has restricted the school's knowledge of the student's current diagnostic functioning, and the parent's attempts to exercise absolute control of information flow has encumbered the PET process. However, the parent has neither the right nor the authority to prevent the PET from engaging in a full discussion of the student's needs, with whatever personnel are required to conduct that discussion. Evidence from the hearing shows that the school had adequate information from the 1996-97 year to develop an IEP which better reflected the growth the student made than that currently proposed. They should have used it to better advantage.

There is a wealth of information from a variety of professionals who have worked closely with the student to make a good start on a new program plan for the student. Testimony from the student's education technician, program staff at the day treatment program and staff from the vocational program showed an informed understanding of the student and the student's needs. Having worked closely with the student over the past year these professionals stated that in their opinions a program which includes the components proposed in the current plan do provide the student with the degree of support the student requires.

Concrete observations of when, and under what circumstances, the student relied on individual support from an aide made it clear that there were indeed times when the student does not require this support, and times when it is critical. The success he showed in the student's academic subjects and independent writing projects indicate the student's level of academic placement. The weekly progress reports from Future Builders give PET members objective information upon which to continue a work experience program. Observed behavior successes, behavior problems and use of coping skills in managing behaviors provide abundant information to assist the PET to develop behavioral goals. the student's previous education technician was especially convincing in his opinions of the student's behavioral struggles and successes. It is not an ideal situation for the PET to develop a new program for this young person with so

97.184

Page 8

little comprehensive diagnostic data, but if the parent refuses to cooperate in allowing a full evaluation the PET should not fail to fully discuss and plan a program using what information is currently available.

The other sub-component that the school identified as problematic and in need of clarification in conjunction with this effort to develop a plan for the student is the existence of a "beeper" or paging device as part of the student's program. A "Crisis Plan", dated July 1995, is attached to the proposed IEP. It states that the first step is to "call mother... or page her..." School staff testified that they have not found a need to

use the pager as they have always been able to contact the parent by phone or could leave a message. If the PET decides that a new crisis plan is needed - or if any crisis plan is needed - they should address the issue of the beeper/pager at that time.

Given that the student demonstrated gains over the past 12 months, and in the absence of other testimony or evidence to the contrary, the service array proposed by the school seems an appropriate framework upon which to build the rest of the program. The district must now convene a PET to develop realistic goals and objectives which are based on the progress the student made last year and build on that progress. The PET which takes on this task, in addition to proper notice to the parent, shall include those professionals who have knowledge of the student and the student's needs.

V. Procedural Issues

The balance of the issues raised at the hearing are questions around procedures which are clearly spelled out in regulations and case law. The school stated that it required the hearing officer to rule on these issues to give the school support in its efforts to provide an appropriate program for the student. After careful review of the record however, it is the opinion of the hearing officer that the school is well aware that procedures which govern the provision of services to special education students do not allow the parent the control and latitude afforded the student's mother by the school and other service providers. Why the school failed to exercise their procedural obligations is unclear. There is no evidence that the school made definitive decisions on programming matters and then assisted the parent to exercise her due process rights if she disagreed. Rather, the school, and other service providers, allowed the parent veto power over every program decision, often to the detriment of the student's program.

97.184

Page 9

2. Should the student undergo a triennial evaluation at this time, and to what extent does the PET have the authority to define and direct the components of that evaluation.

"A reevaluation of each student who receives special education and supportive services shall be conducted every three years, or more frequently if conditions warrant or if the student's parent or teacher requests an evaluation." [MSER Chapter 101, Section 8.22] "Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C) prior to conducting any reevaluation of a child with a disability except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond." [20 USC §1414 (c)(3)] The school "shall identify and describe, whenever possible, the specific evaluations or diagnostic

procedures intended to be used. An evaluator may, based on clinical judgment, administer additional assessments or evaluations in addition to those specified in the notice". [MSER Section 8.15]

School staff testified that they wish to conduct a comprehensive triennial evaluation of the student but have not been successful in obtaining compliance from the parent and the student for such an evaluation. The parent has insisted that she have control over what such an evaluation will consist of, when it will occur, and who will have access to the results.

There is no question that it is time for the student to have a triennial evaluation. The PET has the obligation to obtain a reevaluation of a student at least every three years. The last comprehensive evaluations which fulfill the requirement for a triennial evaluation for a student such as the student occurred in 1991 and 1992. Further, the regulations are clear that the PET has, not only the authority, but the obligation to "identify and describe...the specific evaluations or diagnostic procedures intended to be used". While the parent's non-compliance with requests for evaluation is well documented, there is no evidence in the record that the school has presented the parent with a written statement of "specific evaluations or diagnostic procedures intended to be used" or that the school has attempted to schedule evaluations which have been denied by the parent.

Whether the student will participate in an evaluation defined by the PET or whether the parent will allow such an evaluation is not a matter for this hearing. However, at this point the school has not presented the parent with a clear description of what such an evaluation would include. Until it does so, the school has not completed its obligation.

97.184
Page 10

3. Does the parent have a legal right to edit evaluations that are ordered as part of the special education process and to determine whether or what part of those evaluations will be released to school officials who have a legitimate educational interest in their content?

4. Does the student's mother have a legal right to control the release of information about her child back and forth between her child's educational services providers who are regular school employees or serve as such by virtue of a contractual relationship with the school?

[Because issues 3 and 4 address the question of the control and release of personally identifiable information, they are considered together.]

The school stated at the hearing that service providers have been unable to share information about the student, the student's needs and the student's progress because

the parent has expressly forbidden it. She has consistently relied on her rights to confidentiality and control of personally identifiable information to bolster this position. Her position is without merit. "Consent of the parent shall be obtained in writing before personally identifiable information is disclosed to anyone *other than designated officials or employees of the school...* [MSER Section 12.4. Emphasis added]

If the PET has determined that services required to identify or provide for the needs of a special education student must be obtained from a provider who is not an employee of the administrative unit these services may be provided "in accordance with the terms of a written contract approved by the superintendent". [MSER Section 6.10] Once the school "makes a determination to contract with an outside person or agency to provide a service for a special education student, that person or agency becomes, for the purpose of that student's program, an employee or agent of the district..." Marshfield School, 22 IDELR 198 (SEA ME 1.27.95) The relationship exists between the "sending unit", the school, and the provider, not the provider and the parent. The provider assumes the status of "employee of the district" and any evaluation report, progress report or educationally relevant records resulting from this relationship are subject to law and regulations governing education records as defined by the Family Education Rights and Privacy Act.

Any educational agency or institution may disclose personally identifiable information from an education record of a student without [parental consent] if the disclosure...is to other school officials, including teachers...[who have been] determined to have legitimate educational interests."

[34 CFR §99.31]

97.184
Page 11

Not only does the parent not have the right to control the release of information among and between service providers, but to do so interferes with the school's, and other provider's, legitimate need to share information in order to discharge its obligation to develop and implement a program which meets the student's needs. With a student who presents such a complicated profile as this student, it is imperative that all service providers have an opportunity to conduct open and informed discussions. In fact, regulations require that any contract to provide special education service must include "[p]rovisions for the timely exchange of essential information and individual student reports *between the provider and the sending unit*". [MSER 6.10 (B)(5) Emphasis added.]

Interagency agreements which are required by federal special education law between the state education agency and other state agencies serving special education students likewise imposes the same relationship for the release and sharing of educational records including information gathered from assessments and other services paid for with public funds, such as Medicaid. [20 USC §1412(a)(11)] The parent, does,

however, have the right to use any evaluation obtained at parent expense in any way she chooses.

5. Does the student's mother have a legal right to determine what information shall be provided by the district to those educational entities or providers where the school is applying for the student's attendance?

The regulations are quite clear on this issue. "A school shall disclose education records without parental consent upon request from another school or school system in which the student is enrolled or intends to enroll in accordance with the Family Rights and Privacy Act". [MSER Section 12.4] Again, it is difficult to understand why the school has allowed the parent to exercise such total control over the flow of 97.184 information when clearly there is no legal reason to do so.

6. Does the student's mother have the legal right to determine which particular individuals shall be hired to work with her child?

Personnel assigned to provide special education and related services must be properly certified and licensed, or work under the supervision of properly certified and licensed personnel. There is no basis in education law or regulations which allows parents employment jurisdiction over staff who serve their special education children. The parent, as a member of the PET, may participate in the planning of the student's program, and recommendations of the type of personnel required to carry out that program, but it is the school which is charged with the legal responsibility to implement the program, including all matters of hiring and firing.

97.184
Page 12

7. Does the student's mother have a legal right to be paid mileage for her own attendance at PET meetings for the student?

"Meetings of the Pupil Evaluation Team shall be scheduled at a time and place mutually convenient to the parents and the school to ensure parental participation. If the parent is unable to attend a meeting, schools may use a conference call or individual telephone call to ensure parent participation." [Section 8.4] Special education law and regulations are silent on the issue of mileage reimbursement for parents to attend PET meetings. There is nothing in current special education law and regulations which grants the parent the right to receive mileage reimbursement for attendance at a PET. Likewise, there is nothing in regulations which prevent the school from paying a parent for mileage expenses. If the school wishes to pay a parent's mileage expenses to attend a PET, they are at liberty to use local funds to do so.

8. Is the school required to transport the student to services and programs that are not part of his IEP, but are being provided by other agencies?

"Special education transportation shall be specified by the Pupil Evaluation Team in the student's Individualized Education Program when the Team determines that the

transportation is necessary in order for the student...*to benefit from an education program*...Students...shall be provided transportation...as specified in their Individualized Education Program”. [Section 6.11 Emphasis added.] The PET must define the student’s needs for transportation and provide it accordingly. The obligation is to provide transportation necessary for the student to benefit from an education program, but nothing in regulation prevents the school from providing additional transportation with local funds.

9. Does the student’s mother have a legal right to control who the school may invite to attend the student’s PET meetings?

“Each Pupil Evaluation Team shall include the following members: a representative of the school administrative unit with written authorization to obligate the unit’s...resources; the students special education teacher...;² the student’s parent(s)”. [Section 8.6] “The administrative unit shall provide 7 days prior notice of any [PET] to the caseworker of the Division of Mental Retardation, Bureau of Children with Special Needs, Department of Human Services or Bureau of Rehabilitation directly involved with the student when the caseworker is known to the administrative unit...Other individuals may be invited at the discretion of the parent or the administrative unit”.

97.184
Page 13

Witnesses testified that the parent would not, on occasion, allow certain staff of the school or staff of other service providers to attend PET meetings. Nothing in regulations gives parents that right. Both the school and the parent may invite any individuals, which in their opinion, are needed to participate in the decision-making process. It is not at all clear why the school allowed the parent to exercise such control over the very foundation of the special education process.

Evidence shows that at times the school was in violation of regulations by failing to involve the persons who are required to attend PET meetings. To allow a PET to convene which does not include the participants required violates the regulation. The school has an obligation to comply with all regulations in regard to the notice and convening of PET meetings. If the parent refuses to attend the PET meeting because certain participants, who have a legitimate need to attend, are to be present then the meeting should be held without the parent’s participation. If consensus cannot be achieved by the PET the regulations are clear that the school must make an administrative decision based on the best information available. Any decisions made at the meeting are then subject to the parent’s right of due process.

The school has an absolute obligation to provide the student with a free appropriate public education. By all accounts the program provided last year met that obligation until the school began to jettison portions of the program on parent demand. It is

² Because the student is in an out-of-district placement, the regular education teacher is not required at all meetings. See Section 8.6(C).

laudable that the school made such effort to accommodate the parent's participation, until that participation began to interfere with the student's receiving an appropriate program. The school must take the initiative to make the student's education needs the center of all discussions.

In the past an inordinate amount of time has been spent in meetings and phone calls reacting to the parent's wishes. A special education student's program is based, not on want, but on need. The school is under no obligation to fashion a program to meet the wishes of a parent, rather, the school must fashion a program based on the student's needs, whether or not it complies with the parent's wishes.

It is time for the school to get on with the business of meeting its obligation to educate the student. The student's mother is encouraged to be a member of the team which makes the decisions about this educational program. She is, however, just that - a member of the team. She cannot and has no authority under the law to control or manage the student's program. The IEP is developed by the team, and any changes to that program are determined by the team.

97.184
Page 14

While it will be unfortunate if the parent refuses to participate in the planning, or interferes with the implementation of the program ultimately designed, that is her choice. She has been notified of her rights to due process, and must exercise them if she feels the school has not offered a program which is reasonably calculated to provide the student with educational benefit.

I have some sympathy with the school in its attempts to work with this family. Evidence shows that in the past when the student or the student's mother refused to comply with program demands, the student has simply stopped attending school. And, the student has been out of school for long periods of time in the past. The school has no authority to force a parent or a child to participate in a special education program it has offered unless it wishes to file an action with the courts or other departments of state government. The school must comply with all procedural safeguards in the notification and development of a program for the student. They cannot make the student attend.

VI. Order

1. The PET shall convene within 15 days of the receipt of this decision for the purpose of developing a new IEP for the student. The school shall comply with efforts to ensure the participation of the parent as described in regulation. All staff, both from the school and from other state and local agencies which serve the student, who have a recent working knowledge of the student and his

special education needs shall be invited to the PET. If they are unable to attend the meeting(s) the school shall solicit their input in writing.

2. In the development of a program for the balance of the 1998-99 school year, the school shall consider and make a decision on the services required, including the support of an educational technician; goals and objectives for the program; the need for a crisis plan and its content; and what transportation is required in order for the student to benefit from the student's education program. The PET should designate a single program coordinator so that there is consistency and communication among all providers. If the PET is unable to reach consensus regarding the program, the PET chairperson shall make the decisions necessary, subject to the parent's right to a due process hearing.

3. The PET, either at this meeting or a subsequent meeting convened within 30 days of the first, shall determine what evaluative data will better enable the PET to make program decisions for the student. The PET shall identify and describe, to the extent possible, the specific evaluations and diagnostic procedures intended to be used. The school shall attempt to obtain informed consent from

97.184
Page 15

the parent for these evaluations to take place. Documentation of their attempts to obtain consent shall become part of the student's special education record.

4. If the parent fails to participate in the PET process, the parent shall be informed in writing of the program developed and shall be encouraged to have the student participate in this program.

Carol B. Lenna
Hearing Officer